

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeene G. Kelly.

ISO New England Inc.

Docket No. ER05-973-000

ORDER ACCEPTING QUARTERLY REPORTS

(Issued July 14, 2005)

1. On May 16, 2005, ISO New England Inc. (ISO-NE) submitted for filing, pursuant to section 205 of the Federal Power Act (FPA),¹ its Capital Projects Report and schedule of unamortized costs of funded capital expenditures for the quarter ending March 31, 2005. In this order, the Commission accepts the Capital Projects Report and the schedule of the unamortized costs for filing.

I. Background and Description of Filing

2. Section IV.B.6.2 of ISO-NE's Transmission, Markets and Services Tariff provides:

Consistent with the requirements imposed by the Commission in Docket No. ER02-2153, the ISO will file quarterly reports with the Commission specifying, by project, the ISO's prior year spending on multi-year projects, year to date spending and a forecast of the next calendar year spending. In addition, the ISO will file a schedule of the unamortized costs of the ISO's funded capital expenditures at the end of the quarter and the allocation of those costs to Schedules 1, 2 and 3. . . All quarterly capital budget and expenditure filings will be filed pursuant to, and subject to Commission review under, section 205 of the Federal Power Act.²

¹ 16 U.S.C. § 824d (2000).

² See *ISO New England Inc.*, 109 FERC ¶ 61,382 (2004).

3. ISO-NE submitted its May 16 filing in accordance with this tariff provision. ISO-NE asks that the Commission accept the Capital Projects Report and schedule of the unamortized costs as filed.

II. Notice of Filing and Responsive Pleadings

4. Notice of ISO-NE's filing was published in the *Federal Register*³ with motions to intervene and protests due on or before June 6, 2005. Massachusetts Municipal Wholesale Electric Company (MMWEC) filed a motion to intervene and comments. On June 10, 2005, the New England Power Pool Participants Committee (NEPOOL Participants Committee) filed a motion to intervene out-of-time. On June 21, 2005, ISO-NE filed an answer to MMWEC's comments. On July 6, 2005, MMWEC filed a reply to ISO-NE's answer.

III. Discussion

A. Procedural Matters

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴ the timely, unopposed motion to intervene filed by MMWEC serves to make MMWEC a party to this proceeding. Additionally, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, we will grant the motion to intervene out-of-time of the NEPOOL Participants Committee, given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or burden. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁵ prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept ISO-NE's answer and MMWEC's reply because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. MMWEC's Comments

6. MMWEC notes that ISO-NE states in its filing that it will "work through the stakeholder process" to develop capital budgets for the years 2006-2008. MMWEC asks that the Commission condition acceptance of the instant filing on a requirement that ISO-

³ 70 Fed. Reg. 29,731 (2005).

⁴ 18 C.F.R. § 385.214 (2005).

⁵ 18 C.F.R. § 385.213(a)(2) (2005).

NE produce, as part of this stakeholder process, cost-benefit analyses for all future major proposed capital expenditures.⁶ MMWEC claims that the magnitude of funds that ISO-NE expects to expend to address market design issues and selected implementation issues demonstrates the continued need for market participants, state regulators and the Commission to be fully informed as to the bases for each of ISO-NE's proposed capital expenditures.

7. More specifically, MMWEC requests that the Commission require that for each major proposed capital expenditure, a cost-benefit analysis be conducted and presented by ISO-NE to the stakeholders for review. MMWEC urges that these analyses include as costs not only ISO-NE's expenditures that will be passed on to customers but also, to the extent quantifiable, the likely costs to stakeholders of required changes in their business practices or systems and likely increases or decreases in the costs of transmission service, wholesale electricity, or ancillary services. Furthermore, MMWEC asserts that ISO-NE's quarterly reports (and information furnished through the stakeholder process) should include a comparison of the projected costs and benefits with the actual costs and benefits, both during project implementation and after the implementation stage is complete. MMWEC states that it does not seek to limit market design innovation through these requests and acknowledges that not all costs or benefits can be easily quantified. MMWEC insists, however, that the only ideas that should ultimately be pursued are those that can be shown to be likely to bring net benefits to the consumers who will pay for their development and implementation.

2. ISO-NE's Answer

8. In its answer, ISO-NE notes that MMWEC has not protested the substance of the Capital Projects Report and schedule of the unamortized costs, challenged the data contained within these documents, or argued that the submission somehow violates the ISO-NE tariff's reporting requirements. For this reason, ISO-NE argues that the Commission should unconditionally accept the quarterly reports as filed.

9. ISO-NE further asserts that MMWEC's comments are an attempt to present a complaint, pursuant to section 206 of the FPA, in the form of a response to a section 205 filing. Specifically, ISO-NE argues that MMWEC's requested changes to ISO-NE's tariff constitute a request to alter the filed rate because section IV.B.6 of ISO-NE's tariff does not currently impose an analytic requirement in addition to the reporting requirements. ISO-NE contends that only it may alter its own tariff in a section 205

⁶ MMWEC defines "major proposed capital expenditure" as any capital expenditure of \$3 million or more in the upcoming year or \$5 million or more in the next three years.

proceeding and that MMWEC may only seek to alter ISO-NE's tariff through a proceeding under section 206 of the FPA.

10. Furthermore, ISO-NE states that even if MMWEC could appropriately seek to alter the ISO-NE tariff in this proceeding, it has provided no showing that the existing provisions of section IV.B.6 are unjust and reasonable. Also, ISO-NE notes that MMWEC had several earlier opportunities to seek modifications of the pertinent tariff language at the time it was filed, but failed to do so and did not comment on this language at all.

11. Finally, ISO-NE claims that additional cost-benefit analysis is unnecessary because the stakeholder process and ISO-NE filings with the Commission provide ample opportunity for market participants to examine capital project costs. ISO-NE notes that market participants such as MMWEC have the ability to raise concerns, through the NEPOOL Budget and Finance Subcommittee about potential capital and operating costs before they are incurred by ISO-NE. ISO-NE also points out that the majority of capital expenditures arise from changes in market rules, and any change in market rules necessitates a stakeholder process that allows for market participant review and input.

3. Commission Conclusion

12. The Commission will accept the Capital Projects Report and schedule of unamortized costs of funded capital expenditures for the quarter ending March 31, 2005, as filed by ISO-NE.

13. The Commission finds that the Capital Projects Report and schedule of unamortized costs of funded capital expenditures filed by ISO-NE fully meet the requirements of section IV.B.6.2 of ISO-NE's tariff. We agree with ISO-NE that MMWEC is seeking, through its request that ISO-NE perform cost-benefit analyses for all future major proposed capital expenditures, to alter the reporting requirements of ISO-NE's tariff. As ISO-NE correctly notes, such a request is outside of the scope of this section 205 proceeding, which concerns only the quarterly reports submitted pursuant to the tariff. MMWEC's protest, which expresses concerns regarding the current reporting requirements in section IV.B.6.2 of ISO-NE's tariff and does not raise concerns with the actual reports at issue in this docket, is more properly filed in a complaint proceeding under section 206 of the FPA.⁷

14. Additionally, we note that MMWEC and other market participants have sufficient outlets to review and comment on ISO-NE's proposed capital projects. Besides the New

⁷ See, e.g., *Commonwealth Edison Co.*, 108 FERC ¶ 61,185 at P 7 (2004), *order denying reh'g*, 110 FERC ¶ 61,269 at P 10 (2005).

England stakeholder process itself, MMWEC may intervene and comment on ISO-NE's annual budget filing, which sets the capital budget for the upcoming fiscal year. Should a capital project proposed by ISO-NE seem unjust or inappropriate to any market participant, that market participant can protest ISO-NE's capital budget filing and bring the issue to the Commission's attention.

The Commission orders:

The Capital Projects Report and schedule of unamortized costs of funded capital expenditures for the quarter ending March 31, 2005 are hereby accepted for filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.